KILLIAN L. HUGER, JR.

IBLA 77-454 Decided February 27, 1979

Appeal from decision of the New Mexico State Office, Bureau of Land Management, requiring additional information for pending oil and gas lease offer NM 27652.

Affirmed.

1. Oil and Gas Leases: Applications: Generally--Oil and Gas Leases: Applications: Attorneys-in-Fact or Agents--Oil and Gas Leases: Applications: Drawings

   Under 30 U.S.C. § 226 (1976), the Department has no authority to issue an oil and gas lease to other than the first-qualified applicant, and if an agent signs an offer for an applicant, the applicant cannot be considered qualified unless the statements required by 43 CFR 3102.6-1 have been timely filed.

2. Oil and Gas Leases: Applications: Generally--Oil and Gas Leases: Applications: Attorneys-in-Fact or Agents--Oil and Gas Leases: Applications: Drawings

   Where a rubber stamp is used to imprint an applicant's signature, and where no agent's statement has been submitted under 43 CFR 3102.6-1, a State Office may take appropriate action to establish whether the applicant's signature was imprinted at his request and whether he formulated the offer.

APPEARANCES: Edward B. Poitevent and James P. Lambert, Esqs., Jones, Walker, Waechter, Poitevent, Carrere & Denegre, New Orleans, Louisiana, for appellant.

OPINION BY ADMINISTRATIVE JUDGE GOSS

Killian L. Huger appeals from a decision of the New Mexico State Office requiring additional information in connection with an oil and gas lease offer. 1/ On January 19, 1976, the State Office, Bureau of Land Management (BLM), announced a simultaneous drawing for an oil and gas lease on parcel No. 465 in Lea County, New Mexico. Appellant submitted an offer on January 20, 1976. In the drawing held for parcel 465 on February 13, 1976, Michael D. Malino drew first priority. It was subsequently discovered, however, that several offers on other parcels had inadvertently been mixed in with offers on parcel 465 and some offers on parcel 465 had been omitted from the drawing. Consequently, BLM followed its established procedures and announced a redrawing for parcel 465. In this second drawing, held on February 19, 1976, appellant's offer received first priority.

Malino filed suit in the United States District Court for the District of New Mexico contesting the redrawing held by BLM. On November 30, 1976, the court granted BLM's motion for summary judgment, thus upholding the validity of the redrawing. Malino v. Kleppe, No. 76-114 Civil (D. N.M. Nov. 30, 1976).

Following expiration of Malino's appeal period, BLM prepared to issue the lease on parcel 465 to appellant. During the review of appellant's offer, BLM discovered that appellant had not personally signed the offer card. Consequently, on June 17, 1977, BLM informed appellant that no lease could be issued until he had executed and filed "a statement stating all the circumstances under which the imprint [of his signature] was made and the offer formulated. The attached form, without alterations must be used for this purpose." (Emphasis in original.)

In this appeal, appellant questions the application of Department regulation 43 CFR 3102.6-1(a)(2) in his case. This regulation states in part:

> (2) If the offer is signed by an attorney in fact or agent, it shall be accompanied by separate statements over the signatures of the attorney-in-fact or agent and the offeror stating whether or not there is any agreement or understanding between them or with any other person, either

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1/ The appeal herein has been scheduled for Board consideration following D. E. Pack, 30 IBLA 166, 84 I.D. 192 (1977), reconsideration en banc, 38 IBLA 23, 85 I.D. 408 (1978), and H. R. Delasco, Inc., 39 IBLA 194 (1979). Delasco involved some 65 cases, IBLA 77-221 et al.

> oral or written, by which the attorney in fact or agent or such other person has received or is to receive any interest in the lease when issued, including royalty interest or interest in any operating agreement under the lease, giving full details of the agreement or understanding if it is a verbal one. The statement must be accompanied by a copy of any such written agreement or understanding.

Appellant admits using the services of Bryan Bell prior to making his offer of January 20, 1976. Furthermore, he states that he "does not question, in any way, the right of the BLM to inquire into the question of whether an 'agent' signed the offer in question where a facsimile signature is used." (Brief at 4). Instead, appellant alleges that the space on the form that he was directed to complete was restrictive and "severely limit[ed his] opportunity to fully explain the facts surrounding the signing of his offer." (Brief at 4). Since, appellant maintains, Bell provided only pre-filing services, the decision in Foster v. Udall, 335 F.2d 828 (10th Cir. 1964), requires the finding that Bell was not appellant's "agent" as contemplated by 43 CFR 3102.6-1(a)(2) and, therefore, that regulation's disclosure requirements do not apply.

[1, 2] The Department has no authority to issue an oil and gas lease to other than the first-qualified applicant. If an agent has signed an offer for an applicant, then the applicant cannot be considered qualified unless the statements required by 43 CFR 3102.6-1 have been timely filed. Robert C. Leary, 27 IBLA 296 (1976).

Appellant misconstrues the Foster v. Udall holding. As the court noted, "the portion of the particular regulation here concerned has been eliminated * * *. Thus the case is * * * one of 'last impression.'" Foster, supra at 830. The regulation construed in Foster read in part: "If the offer is signed by an attorney in fact or agent, or if any attorney in fact or agent has been authorized to act on behalf of the offeror with respect to the offer or lease, separate statements [must be filed]." (Emphasis added.) The underlined portion of the regulation was eliminated before the court decided Foster, but was in effect at the time of the alleged violation. Since Foster, unlike appellant here, had personally signed her entry card, the court was not concerned with the first part of the regulation. Instead, the court had to interpret the meaning of the phrase "authorized to act * * * with respect to the offer or lease."

In contrast to Foster, appellant here did not personally sign his entry card. Neither did Pan American Petroleum Corporation v. Udall, 352 F.2d 32 (10th Cir. 1965), involve an offer signed by someone other than the offeror. Neither case involved establishment of priorities under the simultaneous filing procedures. Departmental

regulation 43 CFR 3102.6-1(a)(2) clearly reads: "If the offer is signed by an attorney in fact or agent, it shall be accompanied by separate statements * * *." As the Board held in Robert C. Leary, supra at 299-301:

> If an agent, rather than an amanuensis, signs an offer for an applicant by facsimile signature or otherwise, the applicant cannot be considered qualified unless the statements required by 43 CFR 3102.6-1 have been filed. * * * Southern Union Production Company, 22 IBLA 379 (1975). The presumption that a handwritten signature was written by the person named therein provides a satisfactory basis for concluding that no agent was involved. However, where a rubber stamp appears to be an applicant's signature, the State Office need not presume that an applicant intended the stamp to be his signature, and where no agent's statement has been submitted, the State Office may seek to establish that the applicant's signature was stamped at his request and that the applicant, rather than an agent, formulated the offer. * * * Otherwise, the State Office takes the risk of issuing improperly a lease to an unqualified applicant. Execution of the statements would avoid such risk if these elements are encompassed. It would be appropriate to have the statement * * * contain a full delineation of the circumstances under which the stamp was imprinted and the offer formulated.

The decision in Leary was followed in D. E. Pack (1977), reconsideration en banc, (1978), supra n. 1, and in H. R. Delasco, Inc., supra n. 1. Under these decisions, appellant falls squarely within the disclosure requirements of 43 CFR 3102.6-1.

As to appellant's claim that the BLM form was too restrictive, appellant could easily have set forth his Foster arguments and other matters as addenda to the form. Since appellant was not asked to provide his information until June 1977, well after this Board's October 1976, decision in Leary, supra, BLM could have reminded him of that decision. At that time, appellant could have decided whether to complete the form, a purely mechanical operation assuming the correctness of his allegations that Bell was providing nothing more than pre-filing services, or to test the continuing validity of Foster. Furthermore, appellant could have then made a reasoned decision on whether to complete the form as much as possible within his understanding of its restrictions before bringing his appeal. Instead, appellant failed to provide any information and chose, incorrectly, to base all of his hopes on Foster.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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Joseph W. Goss
Administrative Judge

We concur:

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Edward W. Stuebing
Administrative Judge

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Joan B. Thompson
Administrative Judge